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Attorneys for Defendants

DAVE CORTESE AND COUNTRY CLUB VILLA  
APARTMENTS

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ERIK ESTAVILLO,

Plaintiff,

v.

SENATOR DAVE CORTESE, COUNTRY  
CLUB VILLA APARTMENTS,

Defendants.

Case No. C2:304032-VKD

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION TO  
DISMISS PLAINTIFF'S COMPLAINT**

**Date: November 28, 2023**

**Time: 10:00 a.m.**

**Courtroom: 2, 5th Floor**

**Judge: Magistrate Virginia K. Demarchi**

Defendants DAVE CORTESE AND COUNTRY CLUB VILLA APARTMENTS

("Defendants"), hereby request that the Court take judicial notice pursuant to Federal Rule of Evidence 201 of the Complaint filed by Plaintiff ERIK ESTAVILLO ("Plaintiff") on June 13, 2023, filed in Santa Clara County Superior Court, Case Number 23CV417418, a copy of which is attached hereto as **Exhibit A**.

Pursuant to Federal Rules of Evidence, Section 201 (b), this Court may take judicial notice of a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

The court may take judicial notice at any stage of the proceeding. Fed. Evid. Code 201 (d).

1 Courts have held that district courts do not abuse their discretion in granting a requests to  
2 take judicial notice of a Complaint, because the subjects of those requests were court filings and  
3 other documents that “can be accurately and readily determined from sources whose accuracy  
4 cannot reasonably be questioned.” Fed. R. Evid. 201(b); see Manufactured Home Cmtys. Inc. v.  
5 City of San Jose, 420 F.3d 1022, 1037 (9th Cir. 2005) (observing that state-court filings can be  
6 “helpful in considering matters related to preclusion in the state courts”). See also, Benton v.  
7 Cnty. of Los Angeles, No. 21-55991, 2023 WL 2340622, at \*1 (9th Cir. Mar. 3, 2023).

8 Dated: October 12, 2023

SPENCER FANE LLP

9  
10 By: 

Servando Sandoyal

11 Attorneys for Defendants  
12 DAVE CORTESE AND COUNTRY CLUB  
13 VILLA APARTMENTS  
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# EXHIBIT A

1 Erik Estavillo  
2 3284 Cortese Circle  
3 San Jose, CA. 95127  
4 (408) 593-1226  
5 webbbnet@aol.com

(ENDORSED)  
**FILED**  
JUN 13 2023  
Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY                      DEPUTY  
A. MONTES

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
7 **FOR THE COUNTY OF SANTA CLARA**

9 ERIK ESTAVILLO,  
10  
11 Plaintiff,

12 vs.

13 DAVE CORTESE (CA. STATE  
14 SENATOR) , COUNTRY CLUB VILLA  
15 APARTMENTS  
16 Defendants.

CASE NO. **23CV417418**

**JURY TRIAL DEMANDED**

*complaint*

17 **Jurisdiction**

18  
19 1. This court has jurisdiction over this lawsuit because it arises under the laws of  
20 California and the plaintiff and defendants are located in California of which all of the acts  
21 and grievances against the plaintiff have occurred, within the County of Santa Clara.  
22

23 **Venue**

24  
25 2. Venue is appropriate in the Downtown Superior Court because both the plaintiff  
26 and the defendants are located in California and all of the acts and omissions giving rise to  
27 this lawsuit occurred here. Furthermore, it is under California State Statute/Law that one or  
28 more of the claims against the defendants are based.

COMPLAINT AND REQUEST FOR PUNITIVE DAMAGES, AND  
PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE)

**Intradistrict Assignment**

3. This lawsuit should be assigned to the Santa Clara County Division of the Court because all events or omissions occurred to the plaintiff within Santa Clara County.

**Parties**

4. Erik Estavillo, 43, has been a permanently disabled resident at the Country Club Villa Apartments for the past 20 years and lives at the same apartment with his father, 80, who was a marine that served in the Vietnam war, and his mother 70. He suffers from a number of debilitating conditions which include Crohn's Disease, Depression, Obsessive Compulsive Disorder, and Panic Disorder, which is all verifiable through Kaiser Permanente medical records.

5. The Country Club Villa Apartments is a, as they describe it on their website, "Nestled in a quiet country setting at the base of San Jose's East Foothills, Country Club Villa Apartments offer the perfect lifestyle filled with plenty of outdoor fun. Whether you enjoy hiking the foothills to mountain biking, family picnics to golfing, Country Club Villa Apartments is near it all. Enjoy the natural splendor of life at Country Club Villa with spacious living and landscape just inside city limits. The 313 unit property features, 1, 2 and 3 bedroom apartments perfect for both individuals and the entire family. The landmark windmill at the center of the complex will have you looking up, while beautifully landscaped areas throughout the property grounds surround you.

6. David Dominic Cortese is an elected official from San Jose, California. He is currently serving the California State Senate, representing District 15, which encompasses a majority of Santa Clara County. He and his family own the Country Club



1 Villa Apartments, along with the surrounding land which includes a shopping mall  
2 known as Country Club Villa Shopping in San Jose, California.

3  
4 Summary

5  
6 7. The Plaintiff purchased a new vehicle, a 2023 Honda Cr-V from Capitol Honda  
7 in San Jose. He then went to the office at Country Club Villa Apartments to receive a  
8 parking sticker so that he could begin parking on the property, near his apartment.

9  
10 8. Bianca, the community manager, informed him that only two vehicles at a time  
11 can park on the property. And that having a third vehicle was "illegal" and had to park  
12 outside of the property, either across the street, in the visitor section (which only  
13 contains 12 spots for nearly 1000 residents), or the plaintiff could park at the Bank of  
14 America around the corner on Cortese family owned property. The plaintiff obliged.

15  
16 9. The plaintiff began parking his new car in the visitor section, but since there  
17 often were very few spots open there, he sometimes would park at the Bank of America  
18 around the corner. This went well for both parties for about 4 days.

19  
20 10. However on the fifth day the Security Supervisor for Country Club Villa  
21 Apartments, Steve Havilla, began ticketing the vehicle for not leaving the premises by  
22 8:30am, despite the vehicle having a disabled handicap placard. The plaintiff asked the  
23 office for the person who had ticketed his vehicle despite it having a handicap placard.  
24 The plaintiff then went back to his car and began recording other cars to see if they had  
25 been ticketed as well – they had not. When Mr. Havilla came out of the office he  
26 escalated the situation as can be seen on video, (which will be submitted as  
27 evidence). Mr. Havilla argued with the plaintiff for 30 minutes about the policies and  
28

1 that the plaintiff being disabled did not matter whatsoever.

2  
3 11. To deescalate the situation. Mr. Estavillo asked Mr. Havilla for them both to  
4 meet with Property Manager Tricia Morse. However Mr. Havilla refused and left the  
5 office. The plaintiff then asked Ms. Morse if he could keep recording and she said, "No"  
6 so the plaintiff turned off his camera as can be seen in the video. Ms. Morse then  
7 informed the plaintiff to write a letter if he wished to either be given a third parking  
8 sticker so he could park on the premises near his apartment or if he could be exempted  
9 and allowed to park in the visitor zone near his apartment without threat of tow.

10  
11 12. Despite the plaintiff writing the letter, (which has been attached to this complaint  
12 as evidence), Property Manager Ms. Morse never responded to the disabled plaintiff's  
13 pleas for a third parking sticker to park near his apartment or if he would be allowed to  
14 park in visitor parking without further harassment of him and his new vehicle. As a  
15 result of constant ticketing, threat of tow, and harassment by Security Supervisor Steve  
16 Havilla, the plaintiff had no other recourse than to reluctantly file this lawsuit.

17  
18 13. Tricia Morse later left a voicemail stating she had talked to Dave Cortese and an  
19 attorney and that the plaintiff was no longer allowed to enter the main office or get  
20 within 10 feet of any personnel, despite her never filing a restraining order of any type,  
21 and that only the plaintiff's father would be able to talk on his behalf regarding any  
22 matters involving his car and his apartment. The voicemail will be submitted as  
23 evidence.  
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**Claims/Law Violation**

14. The policies of Country Club Villa Apartments violate not just the Federal American with Disabilities Act (a separate federal lawsuit is already being filed as well) but they also violate Californian law which states that any violation of the *ADA* is considered a civil rights violation and subject to a minimum statutory penalty of \$4,000, plus attorney's fees because California has already set its own accessibility requirements in the California Building Code which this court has jurisdiction over.

**Conclusions**

15. Country Club Villa Apartments and Senator Dave Cortese have a horrible and racist public record in treating their residents without dignity and respect. There are only 3-5 black residents in the approx. 300 apartment building complex which holds over 1000 residents in full. All the other residents identify as non-black.

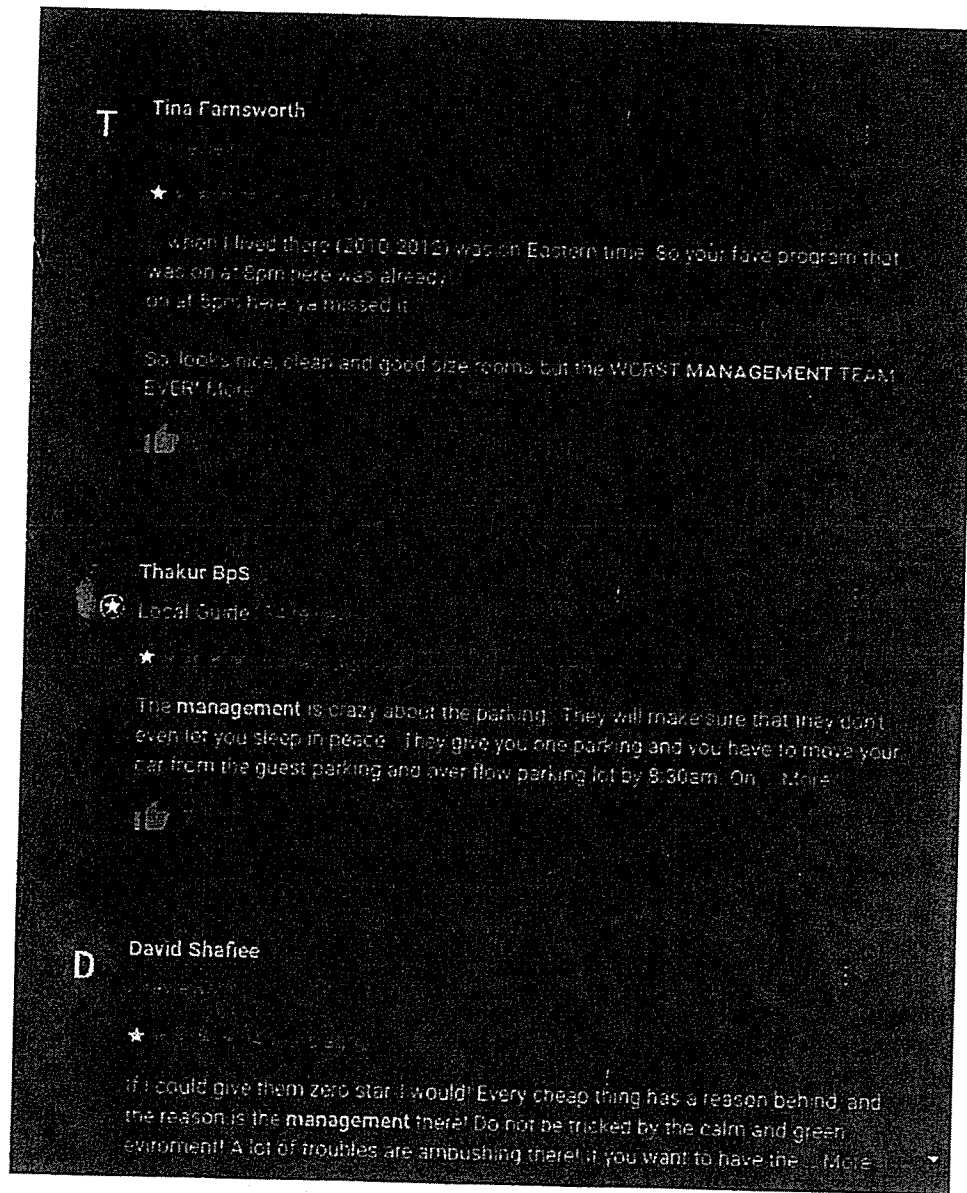
16. Dave Cortese and manager Tricia Morse allowed the San Jose Giants baseball team to live rent free in the apartment complex for months, to the detriment of the neighboring residents. Loud parties were often thrown and were ignored by security and Tricia Morse. Noise complaints were made. None of this seemed to matter as Dave Cortese and Tricia Morse seem to make up the "policies" as they go and however and whenever they see fit. (Evidence will be submitted at trial of this).

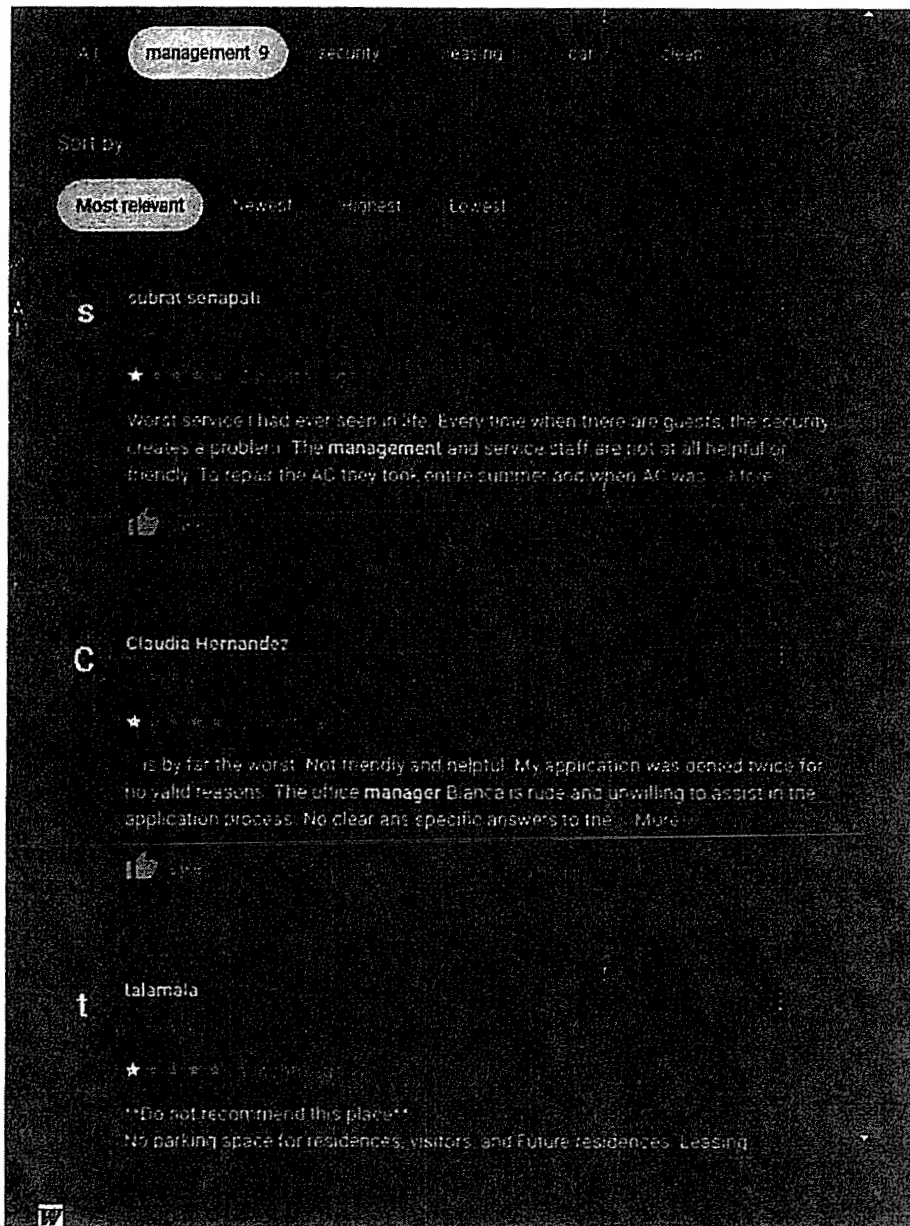
17. Only four subpoenas are planned to be served throughout the case - for Dave Cortese, Tricia Morse, Steve Havilla, and Bianca "Doe" the Country Club Community Manager.

*Geoff Cortese*  
6/13/2023

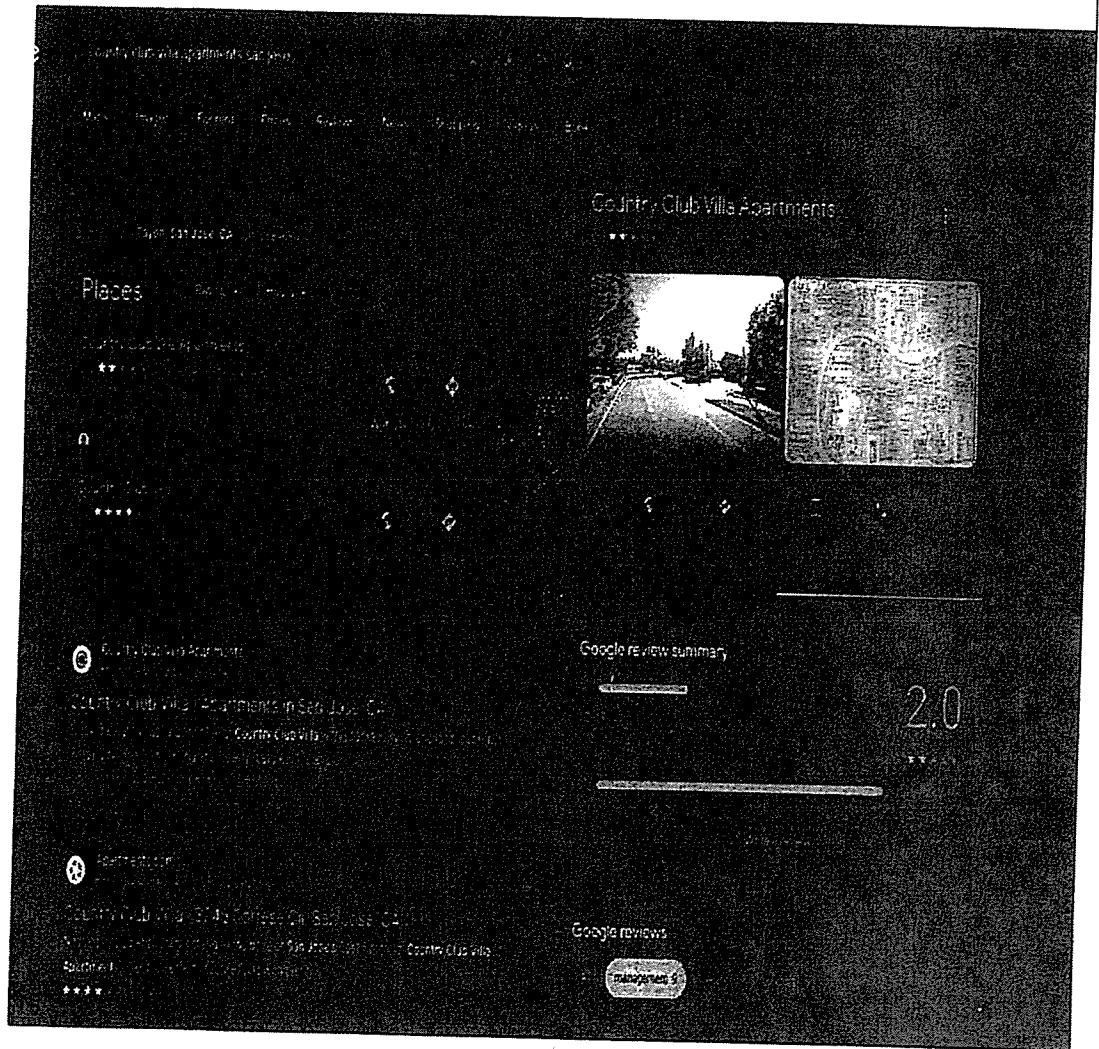


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**Request for Relief**

Plaintiff respectfully prays for a judgment against Defendants for:

- i. \$10 million in punitive damages and accrued fines. The plaintiff has suffered damages as a result of Defendants' conduct, including, but not limited to, emotional distress, inconvenience, and lost wages.
- ii. A declaration that Defendants' policy of not allowing disabled residents to park in designated handicapped parking spaces is in violation of the ADA;
- iii. An Injunction prohibiting Defendants from enforcing this policy;
- iv. Additional damages in an amount to be determined at trial;
- v. Costs of suit; and
- vi. Such other and further relief as the Court may deem just and equitable.

/s/ Erik Estavillo



I'm writing this letter in reference to the parking situation that has occurred with me parking outside the country club villa main apartment complex, in the visitor zone. There are always cars parked in that area next to the security small building as well as across the street. If for some reason I'm unable to park

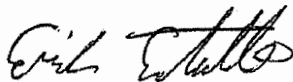
there I can't understand why as I'm on permanent disability and you will not allow a third sticker to be put on a car. This limits where I can park as now I have to park outside of the main complex and I am unable to wake up at 8:30am every morning to move the car. My whole family here is on disability. My ailing

father, 80, who has paid the rent on time for the last 20 years cannot move the car. My ailing mother, 70, cannot either at this time of day. This is a new car. My dad needs to use this car for medical and doctor visits as well. Also, my Crohn's disease is a rough illness, so I need this car for the same reason. As hard as it

is for me to walk everyday as I try to do to my car, which is parked far away from me in the visitor section or the bank in order to move it, it's becoming a troubling process. I formally request your permission to continue parking in the visitor lot any time of day or to be granted a third sticker so I can park closer to my

house as I am on full disability. I'm doing all this in good faith before anything escalates any further. I'd prefer to deescalate the situation now if at all possible. If granted, my dad told me he'd continue renting here for the next 10 years.

Thank you in advance,  
Erik Estavillo

A handwritten signature in black ink, appearing to read "Erik Estavillo". The signature is stylized with a large, looped "E" and a cursive "Estavillo".





VIEW SureWerx Safety Catalog



Call the Detectable Warning Experts : (844) 339-4973

- California Commission on Disability Access – Provides information and resources for businesses needing to modify existing structures for ADA compliance
- gov [<https://www.ada.gov/>] – Provides ADA guides, publications, and more
- The California Building Standards Code – Provides reference materials for commercial facilities and other building types
- ADA Publications for Businesses [<https://www.ada.gov/business.htm>] – Technical assistance, information, and resources for businesses
- ADA Solutions [<https://adatile.com/>] – Offers information about detectable warning systems and how they help businesses achieve ADA compliance

## Frequently Asked Questions About ADA Compliance

**Q:** Does every California business need to be ADA compliant?

**A:** Yes. The disabilities act or ADA requires all businesses that operate from a building and that have 15 or more employees to be compliant with the act.

**Q:** Are there any organizations that are exempt?

**A:** Yes; exempt entities include private clubs; religious organizations and the daycares, schools, and other facilities they may run; places of worship; and other facilities considered to be historically exempt from civil rights law.

**Q:** Does my private business have to comply with the ADA?

**A:** Yes. The act applies to all businesses to comply with the standards for accessible design, even if those businesses don't serve the public. In addition, charitable organizations, nonprofits, and any other privately run company having 15 or more employees and serving the public must also comply.

**Q:** How do I make my facility compliant with the ADA?

**A:** Reviewing this guide and accessing the resources listed within is an important part of becoming ADA compliant. It's also important to research the many products available that can help you achieve ADA compliance. These include detectable warning surfaces, sonic solutions, lighting, and more.

**Q:** What if my business is not ADA compliant?

**A:** Businesses in violation of the ADA can face a minimum of \$4000 in penalties in addition to legal fees when a disabled person files a Federal lawsuit and obtains a cease and desist order. This can have negative effects on a business's reputation and, ultimately, their revenue.

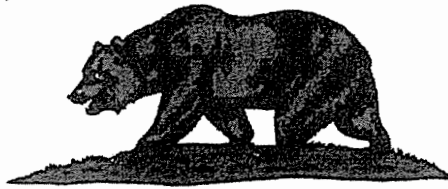
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## CALIFORNIA REPUBLIC

Business owners in California are aware that they are bound by law to ensure safety and accessibility for all of their customers, including people with disabilities. Still, you may have questions about the requirements of the Americans with Disabilities Act. This guide will provide the information you need.

Georgia

*A Guide to Florida ADA Compliance for Businesses*

*A Guide to ADA Compliance in Colorado*

## What Does It Mean to Be ADA Compliant?

The ADA is an act which makes discrimination against disabled individuals by property owners illegal, and it is enforced by the Department of Justice. Discrimination includes neglecting to provide those with disabilities a means of access to spaces where a business's activities are occurring.



Being ADA compliant means that a business has ensured that disabled individuals have the same access as anyone to all areas of their premises.

California takes ADA compliance very seriously; state law declares that any business that chooses to violate the act is also committing a civil rights violation. Therefore, a violator can expect to be fined a minimum of \$4000, in addition to any legal costs they incur.

In addition to following federal ADA requirements, California has set its own accessibility requirements in the California Building Code. Because of this, it's important that business owners pay special attention to ensure compliance.

## Resources for California ADA Compliance

**Tax Benefits**

Tax credits and deductions are available to help pay for inspection and construction costs. A tax credit of up to \$5,000 is available for small businesses that incur expenses related to accessibility improvements.

A tax deduction of up to \$15,000 per year is also available to all businesses for qualified accessibility expenses that are normally capitalized.

*Check with your tax advisor regarding the applicability of these credits and deductions.*

**Protect yourself, your property and your pocketbook**

The best protection against expensive and time consuming ADA lawsuits is to have your business or property inspected, as soon as possible, for access compliance by a Certified Access Specialist (CASP).

Ashdown Architecture is a full service architectural firm with significant expertise addressing complex access compliance issues in buildings and facilities throughout California. We are committed to improving access to the built environment for individuals with disabilities, by providing information, education and solutions to business and property owners. Ashdown Architecture is certified by the California Division of State Architect as a Certified Access Specialist (CASP).

Contact us today for additional information about the invaluable, cost effective benefits a CASp inspection can provide.

**133 Responses to California ADA**

**david sztain says:**

June 3, 2012 at 2:39 pm

I own and reside in a Long Beach condo building of 225 units. When I moved into the building in 2009 there were no rules as to where to store a bicycle. Starting July 1st, 2012 all bicycles are mandated to be stored in a bicycle room for \$3.00 per month. One third of the racks are at low level and accessible to ADA people like myself, while the rest require lifting the bicycle on a shelf or hook. The assignment of space has been awarded on a first come first serve basis with no regard for accessibility. Is there an ADA code regulating bicycle storage facilities in Condominiums?

Thank you

[Reply](#)



**Mindy Zumba says:**

November 9, 2015 at 3:03 pm

I too ride a bike, an electric that weighs 50#. I am 72 and have a rule that if I can't lift the bike onto my bike rack, I can't ride the bike. Reason: Can't be waiting in parking lots for a "big strong person" to 'help' lift my bike....

Perhaps you need to get there early, and lift your own bike....? just a thought!

[Reply](#)



**Jose Ortega says:**

**California ADA Compliance***Ashdown Architecture, Inc.***California ADA**

California – one of the most ADA compliant states in the nation – is also the most ADA litigious. Under California law, any violation of the ADA is considered a civil rights violation and subject to a minimum statutory penalty of \$4,000, plus attorney's fees.

Any disabled person who encounters a building condition that does not meet the accessibility requirements of the ADA or the California Building Code (CBC) is entitled to file a lawsuit and receive a minimum of \$4,000 in statutory damages plus attorney's fees.

While the ADA laws were enacted to protect the rights of the disabled, they have also led to an expensive flood of ADA lawsuits by individuals intent on taking advantage of the system.

It is estimated that over 20,000 ADA lawsuits have been filed in California courts since enactment of the ADA in 1992, and conservative estimates indicate that this litigation costs California businesses over \$20 million each year.

ADA lawsuits are difficult to defend and typically result in minimum payouts of \$4,000 – \$6,000, even if the lawsuit is uncontested. Fortunately, there is now an effective defense against such lawsuits.

**Newly Available Protections**

Recent California legislation provides essential protections for business and property owners from unwarranted ADA lawsuits.

Senate Bill 1608 enables business and property owners to have their facilities inspected for access compliance by a Certified Access Specialist (CAsp).

A CAsp inspection will:

- **Protect against unwarranted ADA lawsuits**
- **Insure compliance with federal and state accessibility requirements**
- **Identify “readily achievable” issues requiring correction**
- **Provide reasonable time frames to make required corrections**
- **Insure that your business is accessible to all potential customers, regardless of disability**

Even if a building is not fully accessible, a CAsp inspection provides a business owner with immediate protection by identifying “readily achievable” issues for correction and establishing an intent to address required accessibility issues.

